The statistical classification of housing associations

Final Report

February 2016
CONTENTS

1. Introduction .......................................................................................................................................................... 3

2. The Statistical Classification of Institutions in the UK ......................................................................................... 4

3. The 2015 Reclassification of Housing Associations in England ......................................................................... 6

4. Other Recent Reclassifications .......................................................................................................................... 8

5. Housing Associations in Northern Ireland ......................................................................................................... 9

6. Impact of Reclassification ................................................................................................................................... 14

7. Conclusions .......................................................................................................................................................... 15

Appendix A: Summary of Relevant Legislation ..................................................................................................... 16
1. INTRODUCTION

Background

1.1 Government policies announced in the July 2015 Budget raised a question about the classification of housing associations in England as private sector organisations. A review by the Office of National Statistics (ONS) concluded in October that ‘private registered providers’ of social housing in England were to be reclassified as public bodies, specifically as Public Non-Financial Corporations. The Housing and Planning Bill currently going through Parliament includes amendments aimed at allowing the ONS to re-reclassify housing associations in England as private sector bodies.

1.2 With consultation currently underway on proposed changes to the regulatory framework for housing associations in Northern Ireland, the Northern Ireland Federation of Housing Associations (NIFHA) has asked Campbell Tickell to review whether associations in Northern Ireland could also be reclassified as public sector were the ONS to undertake a similar review in other UK jurisdictions.

1.3 This brief report sets out our findings. Readers are asked to note that the opinion given here does not constitute or provide a substitute for legal advice.

Our approach

1.4 As we report below, the re-classification of housing associations in England was based solely on a consideration of the Government’s powers over housing associations as defined in the Housing and Regeneration Act (HRA) 2008. Accordingly, we focused our review on Northern Ireland’s equivalent legislation: the Housing (Northern Ireland) Order 1992.

1.5 We also reviewed:

- the document that defines current regulatory arrangements (‘The Regulatory Framework for Registered Housing Associations in Northern Ireland 2006’);
- the most relevant sections of the Department for Social Development (DSD) guidance for housing associations (‘The Housing Association Guide’);
- the DSD’s consultation document on proposals for a new regulatory framework (‘Proposals for a New Regulatory Framework for Social Housing Providers in Northern Ireland’); and
- the response to the consultation from NIFHA and the Chartered Institute of Housing in Northern Ireland (CIH NI).

We report our findings below.

1.6 First, however, we note the factors that the ONS takes into account in its statistical classification of institutions in the UK and the reasons for the reclassification of housing associations in England.
2. THE STATISTICAL CLASSIFICATION OF INSTITUTIONS IN THE UK

2.1 In classifying institutional units as public or private sector, the fundamental question for the ONS is ‘does government exercise significant control over the general corporate policy of the unit?’

2.2 The ONS assesses whether or not such control exists by considering certain ‘indicators of government control’. We set them out here in full:

a) government rights to appoint, remove or approve a majority of officers, board of directors, etc. (including where government has rights to veto the above) – if the government appoints a majority of directors or other key personnel, the unit would be classified to the public sector;

b) government rights to appoint, remove or approve a majority of appointments for key committees having a decisive role in determining key factors of the unit’s general policy, board of directors, etc. (including where government has rights to veto the above) – if the government has the right to appoint or remove most members of the finance or investment committees (for example), the unit would be classified to the public sector;

c) government ownership of the majority of the voting interest – for example, if a majority of shares in a unit are owned by government, it would be classified to the public sector;

d) government rights to appoint or remove key personnel (or veto appointments/removals) – if government appointments of key positions (for example, chairperson, executive directors) effectively give it a ‘decisive say’ in key aspects of corporate policy, the unit will be classified as public;

e) government rights under special shares and options – if government has special entitlements, for example, in relation to a ‘golden share’, this may lead the unit to be classified as public;

f) government rights to control via contractual agreements – if government imposes restrictions on the operation of the unit, for example, through its position as a dominant customer, this may lead to classification in the public sector;

g) government rights related to borrowing/financing – if government has a predominant role in setting the conditions of borrowing by the unit, including the terms of borrowing and/or use of funds borrowed, or is the predominant source of financing for the unit (either directly or by providing guarantees on borrowing by the unit), this may lead to classification in the public sector;

h) government control via regulation – if the government restricts a unit from ceasing activities (that is, exiting markets) or from diversifying its activities, this may lead to classification in the public sector;

2 Ibid
2.3 In the case where the organisation is a non-profit making institution (NPI), there are five further characteristics that the ONS examines:

a) **government appointment of officers** – if the government is entitled to appoint a majority of those managing the NPI (usually through provisions in its constitution, articles of association or other enabling instruments), the unit will generally be classified to the public sector;

b) **other provisions of the enabling instrument(s)** – if the functions, objectives and operating provisions of the NPI are determined by government, if government approval of budget or financial arrangements is required, or if government can veto dissolution, changes to the statute of the entity or termination of any relation between the NPI and government, the unit may be classified as public;

c) **government control via contractual agreements** – if the main activity of the NPI is entering into and executing contracts with government (for example, provision of social care), government is likely to exert control over the general policy of the NPI, and this may result in a public sector classification, especially when the unit is not free to exit its relation with government;

d) **the degree of government financing of the unit** – if an NPI is mainly (over 50%) financed by government on an ongoing basis and/or this financing results in narrow monitoring of the use of funds and thus strong influence over general policy of the NPI, it may be classified to the public sector;

e) **the degree of government risk exposure in respect of the unit and its activities** – if the government is exposed to a large portion of the financial risks of the NPI (for example, through the provision of debt guarantees or guarantees in case of disruption to income streams from sources other than government), it may be classified as public.

2.4 Government control may be established by the strength of one of the indicators alone or by the combined strength of evidence against a number of them. The ONS notes:

‘Classification as public or private can therefore require judgement, and ONS processes are designed to ensure that these judgements are appropriate, consistent and internationally comparable.’

2.5 A further disaggregation of public sector classification distinguishes between Market and Non-Market producers. Market producers “are defined by charging ‘economically significant prices’ (that is, prices that have a substantial influence on the amounts of products that producers are willing to supply and on the amounts of products that purchasers wish to acquire) for all or most of the goods and services they produce.”

---

3 Ibid
4 Ibid
5 Ibid
2.6 Entities which are viewed as both public sector and market producers are classified as Public Corporations, a category which is further sub-divided into Financial and Non-Financial bodies. English associations were reclassified as Public Non-Financial Corporations.

3. THE 2015 RECLASSIFICATION OF HOUSING ASSOCIATIONS IN ENGLAND

3.1 The 2015 ONS review of the classification of housing associations in England was prompted by the Government’s plans to extend Right to Buy to housing association tenants, and the questions raised about that issue by Clive Betts MP⁶ and the Office of Budgetary Responsibility⁷. In the event the ONS review took account only of existing legislation.

3.2 The ONS has not published an opinion on the potential impact on classification of the Summer Budget measures but we understand that if the extension of the ‘Right to Buy’ to housing association tenants had not been made voluntary it would have been seen as state control of assets and an insurmountable barrier to the re-classification of associations as private sector. Similarly, if ending tenancies for life and ‘Pay to Stay’ (the proposed scheme under which high income social tenants would be charged a market or near market rent) had become mandatory for housing associations, re-classification would be out of the question. As we note below, amendments to the Housing and Planning Bill currently going through Parliament are designed to ensure that these initiatives remain voluntary for associations.

Reasons for the reclassification of associations as public sector

3.3 The classification of housing associations in England had previously been reviewed – and confirmed as private sector – in 2003. Since then, the Housing and Regeneration Act 2008 has given the English regulator, the Homes and Communities Agency (HCA), some additional powers to direct and control the affairs of housing associations in England. There have also been recent changes to international guidance on the statistical classification of institutions⁸. Once the question of classification had been raised, it was the overlay of the new accounting guidelines and the regulatory changes brought about through the HRA 2008 that led the ONS to conclude that housing associations are subject to public sector control as defined by the ‘indicators of government control’ set out above. The classification applies with effect from 22nd July 2008, the date of enforcement of the HRA 2008.

⁶ http://m.insidehousing.co.uk/policy/politics/central-government/betts-calls-on-ons-to-review-classification-of-60bn-debt/7010816.article?fontSize=2
3.4 The ONS has published its reasoning for reclassification\(^9\) as follows:

1. HM Government consent powers over, and power to set conditions on, disposals of social housing assets (exercised through the HCA under section 172-178 of the HRA 2008)

2. HM Government powers to direct the use of disposal proceeds (exercised through the HCA under sections 177-178 of the HRA 2008)

3. HM Government consent powers over disposals of housing stock following a registered provider’s de-registration with the HCA (exercised through the HCA under section 186 of the HRA 2008)

4. HM Government consent powers over the voluntary winding-up, dissolution, and restructuring of a registered provider (exercised through the HCA under section 160-166 of the HRA 2008)

5. HM Government powers over the management of a registered provider, in particular the power of the HCA to appoint managers and officers to the provider (exercised through the HCA under sections 151-157, 246-252, 261(3) and 269 of the HRA 2008).

3.5 In announcing its decision the ONS noted\(^10\) that points 1 to 5 indicate government control under control indictors for ‘provisions of enabling instruments’ (item (k) in para 2.3 above) and that point 5 is also evidence of control relating to the appointment and removal of officers and key personnel. It is worth noting that many of these powers pre-dated the HRA 2008.

3.6 The extent to which the HCA has used these powers was not a factor that the ONS took into account in reaching its decision.

**Measures to allow for re-reclassification as private sector**

3.7 Following the ONS decision, the Government immediately committed to reduce regulation to allow for re-reclassification of housing associations as private sector. Over the past few months, the Government and HCA have been working to develop a set of measures that strikes a balance between giving the sector enough independence to regain private sector status while maintaining a regulatory regime that retains investor confidence in housing associations.

3.8 The de-regulation measures announced include:

- removal of the constitutional consents regime so that housing associations will no longer need permission from the regulator before they make certain changes including mergers, restructuring, winding up and dissolution (instead associations will be required to notify the regulator);

---


\(^10\) Ibid
• removal of the disposals regime so that housing associations will no longer require permission from the regulator for sales, charging for security and changes of ownership;
• abolition of the Disposals Proceeds Fund so that housing associations will no longer need to spend receipts from Right to Buy sales according to rules set by the regulator; and
• restrictions on the regulator’s powers to appoint members to an association’s board to circumstances where that would be required to ensure compliance with legal requirements
• introduction of a new special administration regime to protect social housing assets;
• amendments that ensure that ‘Pay to Stay’ will remain voluntary for housing associations.

3.9 We understand that indications are that this set of measures is likely to be sufficient to allow the ONS to re-classify associations as private sector.

4. OTHER RECENT RECLASSIFICATIONS

Further Education Corporations

4.1 In October 2010 the ONS reclassified English Further Education Corporations and Sixth Form College Corporations (FE Colleges), alongside similar bodies in Wales, Scotland and Northern Ireland, into the General Government sector. The reclassification was retrospective, and was due to the realisation that previous Government legislation included significant public sector controls, most importantly consents required to borrow and powers to close or merge colleges11.

4.2 Subsequently the UK Government passed the Education Act 2011 which removed the requirement for English colleges to gain consent for borrowing and limited the Government’s powers to close or merge colleges to situations where an institution was being mismanaged or performing poorly.

4.3 As a consequence of this legislation, the ONS reviewed the situation of English colleges and re-classified them as being in the private sector in May 201212. Since the legislation did not cover Scotland, Wales and Northern Ireland, those bodies remain in the public sector.

12 http://www.ons.gov.uk/dcp171766_266962.pdf
Network Rail

4.4 In 2013, prompted by queries of Eurostat, the ONS reclassified Network Rail as a Central Government body. The key considerations in its decision were the explicit guarantees for Network Rail’s debt given by the Department of Transport, and statutory obligations which would oblige the Government to step in to keep the railways running were Network Rail to collapse.

4.5 The Government was therefore judged to be bearing the greater part of the risk of Network Rail’s activities, and since there were no shareholders, no-one else was seen as sharing this risk\textsuperscript{13}. Network Rail remains in the public sector.

5. HOUSING ASSOCIATIONS IN NORTHERN IRELAND

5.1 The DSD’s ‘Housing Association Guide’ includes a summary of legislation relevant to housing associations in Northern Ireland. We reproduce the summary here at Appendix A.

5.2 From this summary we identified, first, any powers granted to the Northern Ireland regulator comparable to those that led to the reclassification of associations in England. We then identified other elements that could also have a bearing on the classification of housing associations in Northern Ireland even though they did not form part of the reasoning for the ONS reclassification of associations in England. Finally, we reviewed the legislation itself to identify any further relevant items.

Elements of NI legislation that give the DSD comparable powers to those of the HCA

5.3 As noted at para 3.3 above, the aspects of English legislation that formed the basis for the ONS reclassification of associations in England were the regulator’s powers:

- of consent to disposals of social housing assets;
- over disposals of housing stock following an association’s de-registration;
- over an association’s voluntary winding-up, dissolution, and restructuring;
- over the management of an association, in particular its powers to appoint managers and officers; and
- to direct the use of disposal proceeds.

5.4 Sections of the Housing (Northern Ireland) Order 1992 that give the Department comparable powers are:

a) Article 13 – the need for associations to obtain the Department’s consent before they dispose of land (this includes taking out a loan on security of land);

b) Section 9 of the 1969 Act (as amended by Article 29(6) of the 1992 Order) – the need for associations to obtain the Department’s consent to rule amendments;

\textsuperscript{13} http://www.ons.gov.uk/ons/dcp171766_345415.pdf
5.5 The provisions of Article 131 of the Housing (Northern Ireland) Order 2003 give the Department the power to draw up a House Sales Scheme for housing associations to offer for sale or lease to their secure tenants the houses occupied by those tenants. It places a statutory obligation on housing associations to operate the scheme. As one of the reasons for the English reclassification was the regulator’s powers to direct the use of disposal proceeds, we note that the House Sales Scheme includes a requirement on associations to ‘transfer the net surplus on [HSS] sales together with the Voluntary Purchase Grant received to a fund – Disposal Proceeds Fund – which can generally only be used for the purposes of providing replacement properties’\textsuperscript{14}. DSD procedures require associations to provide a detailed plan of expenditure from the Disposal Proceeds Fund, with any net surplus not used on qualifying expenditure within two years being repayable to the Northern Ireland Housing Executive.

5.6 This comparison suggests that all the characteristics of the English housing association sector that led to its classification as public sector are present in the Northern Ireland sector.

Other aspects of NI housing legislation which may be relevant to classification

5.7 There are other characteristics of the Northern Ireland regulatory framework which could be viewed as ‘indicators of government control’ even though similar characteristics in the English sector – where they exist – did not form part of the ONS reasoning for reclassification.

5.8 They include the following sections of the 1992 Order:

a) Article 25 – the Department’s general powers exercisable where it is satisfied, as the result of an enquiry or audit, that there has been misconduct or mismanagement in the administration of an association. These include (in addition to the powers noted above to remove or appoint a committee member) powers to:
- suspend a committee member or officer for up to six months;
- order any bank that holds money or securities on behalf of the association not to part with it without the Department’s approval;
- restrict the transactions the association may enter into or the nature or amount of payment which may be made without the Department’s approval.

\textsuperscript{14} The Housing Association Guide, Finance Guide
b) Article 26 – the Department’s power to direct transfer of land from one registered housing association to another;

c) Article 27 – the Department’s power to petition for the winding up of a registered housing association;

d) Article 6, which relates to borrowing by housing associations. It includes a provision that the Department may guarantee the repayment of a loan made to a housing association;

e) Article 4, which provides that:

‘...the Department may, with the approval of the Department of Finance and Personnel, make such contributions as it may determine towards the administrative and other expenses of registered housing associations...’

5.9 As noted at para 5.5 above, the requirement on associations to participate in the Home Sales Scheme might also be seen as the Government exercising ‘significant control over the general corporate policy of the unit’.

5.10 ‘The Housing Association Guide’ includes a requirement that associations adhere to guidance set out in the Guide’s ‘Governance’ section. The guidance it contains is comparable to that defined in the National Housing Federation Code of Governance. In the English sector, associations are required by the HCA to adopt an appropriate code of governance – the regulator does not itself define, and require adherence to, guidance of this type (although the HCA does have powers to publish codes of practice to amplify the Standards to which associations are required to comply).

5.11 We have not reviewed all sections of the ‘The Housing Association Guide’. It may contain other requirements for compliance with procedures which may be considered as the Government exercising significant control. Nor, given the limited time available, have we reviewed all potentially relevant legislation.

Factors that are unlikely to be relevant to classification

5.12 Aspects of the 1992 Order that would seem unlikely to have a bearing on classification include the Department’s powers to:

- monitor associations;
- conduct an inquiry into the affairs of an association;
- conduct an extraordinary audit for the purposes of a statutory inquiry;
- require the provision of information relating to an association’s affairs;
- determine rent increases; and
- lay down accounting and audit requirements.

5.13 Clearly housing benefit makes up a significant share of the funding for the sector, in Northern Ireland as in England. However, this is viewed as indirect funding through the welfare benefits system and was not, we understand, considered as a potential reason for reclassifying English associations.
5.14 Whilst grant to support new development is currently significantly higher in Northern Ireland than in England, to the best of our understanding it was not considered a factor for retaining the private sector classification in England in 2003, when grant rates were much higher. If the ONS were to change its view of housing benefit as a source of state funding, then the level of grant could be seen as a further aggravating factor.

5.15 Also unlikely to have a bearing is the classification of the regulator. When the issue of the classification of associations first arose in the English sector there was a view that an ‘independent’ regulator reporting to Parliament rather than ministers – along the lines of the Scottish Housing Regulator – could help to re-reclassify associations as private bodies. This was quickly dismissed, however, given that the powers of an independent regulator would still be defined in statute and assets would still be considered as under state control.

5.16 Local authority nominations could be a more borderline issue. We understand that although this was considered by the ONS, the conclusion was that it was not relevant as English associations do not have to enter into nomination agreements and can exit them if they choose. That, in practice, it is difficult for associations to avoid or exit nomination agreements was apparently not a consideration – the key factor was that it was not an absolute requirement. We recognise that the Northern Ireland Housing Executive exercises stronger controls over nominations than local authorities in England. As a consequence, we cannot say whether this would play a decisive role in the ONS’s consideration of the status of the sector in the province.

**Potential changes to the regulatory framework**

5.17 The Department is currently consulting on proposed changes to the regulatory framework. The proposal is to move from the current approach, which is supported by the extensive ‘Housing Association Guide’ defining practice and procedures for housing associations. In its place is proposed a simpler framework based on three standards: a consumer standard, a governance standard and a financial standard. The regulator would define required outcomes for each of the standards and give guidance on achieving the outcomes. This proposed approach has been welcomed by the NIFHA and the CIH NI.

5.18 The Department considers in its consultation document whether it needs further regulatory powers, although its observes\(^\text{15}\):

‘It is necessary to remember that the importance of a regulator possessing certain powers may only rarely be demonstrated by the regulator actually using the power. More generally, and perhaps more effectively, a regulator’s possession of key powers can have a deterrent effect.’

\(^{15}\)‘Proposals for a new regulatory framework for social housing providers in Northern Ireland’, DSD, 2015
5.19 The Department’s concern is that its current powers do not facilitate swift regulatory action: only after an inquiry has concluded can the Department take action such as the removal and replacement of a board member. Although the consultation document notes that potential additional powers include enforcement notices, penalties and compensation it gives no detail as to how these might be used. NIFHA has noted in its response to the consultation\textsuperscript{16}: ‘Whilst the Regulator may require new powers much greater detail should be provided on why these are needed, the exact powers proposed and how they would operate in practice. This should be the subject of a further dedicated consultation.’

5.20 Without detail it is difficult to consider the impact of additional regulatory powers on the classification of associations, but clearly there is the potential for additional powers to be seen as increasing government control of associations.

5.21 In their response to the DSD’s consultation, both NIFHA and CIH NI have taken the opportunity to press for a regulator independent of government. As we note above, whether the sector is regulated directly by Ministers or by an independent regulator reporting to Parliament would not have an impact on the classification of associations.

5.22 The CIH NI response to the consultation\textsuperscript{17} has also suggested that the regulation of rents be included within the regulatory framework. Although NIFHA does not refer to rent regulation its June 2015 consultation response, it has noted elsewhere\textsuperscript{18}: ‘NIFHA is not opposed to the rent formula or government guidelines around maximum rates of increase for rents; however, we do not believe that government or an independent panel should be able to determine what rents housing associations are able to charge their tenants.’

5.23 As rent regulation was not a reason given for the classification of associations in England as public sector, it would seem unlikely to have a bearing on the classification of associations in Northern Ireland.

5.24 Procurement may be an area where recent policy intentions could prove helpful. English associations are considered public bodies for the purposes of European procurement law, however this does not appear to have influenced the ONS’s view of classification. We understand that the DSD is reviewing its very strong controls over association’s procurement. Without the anticipated loosening the current mechanisms could add weight to the arguments in favour of reclassification.

\textsuperscript{16} ‘Proposals for a new regulatory framework for social housing providers in Northern Ireland. Consultation response’, NIFHA, June 2015
\textsuperscript{17} ‘Policy Response. DSD proposals for a new regulatory framework for social housing providers in Northern Ireland’, Chartered Institute of Housing in Northern Ireland, June 2015
\textsuperscript{18} ‘Independent regulation and rent setting: NIFHA perspective’, NIFHA (undated)
6. IMPACT OF RECLASSIFICATION

6.1 We can only speculate as to the impact of reclassification on the sector in Northern Ireland were it to occur. At one level it would simply create a headache for the statisticians charged with determining which elements of economic activity need to be counted in the different sectors of the UK economy.

6.2 At another level the effects would depend on which part of Government associations were reclassified to, the key distinction being between General Government (comprising mainly the Central Government and Local Government sectors) and Public Non-Financial Corporations. The former classification brings with it stronger controls and direction from Government, whilst the later indicates a more arms-length relationship, with more commercial freedoms.

6.3 The FE Colleges and Network Rail were both reclassified as General Government bodies, the FE Colleges to the Local Government sub-category and Network Rail to Central Government. Their experiences of reclassification are that the eventual implications include some or all of the following:

- Freedom to borrow in own name being replaced by the need to apply to use Government general borrowings, which in turn are controlled and targeted as part of the efforts to reduce the public sector deficit;
- Requirement to submit a business plan for approval to the relevant department or local authority on an annual basis, and the consequent firm government control over strategy, policy and capital projects;
- Replacement of independent board members by civil servants or government appointments;
- Being subject to public sector spending controls which are administratively onerous and which currently include headcount freezes, salary restrictions and redundancy limitations;
- Being subject to the Freedom of Information Act 2000, with its consequent staffing and cost implications;
- Audit arrangements needing to come within the remit of the Comptroller and Auditor General and the National Audit Office; and
- New policies and ways of working affecting everything from approach to presenting financial information to the appointment of consultants, use of temporary contracts and recruitment.

6.4 English associations have, for the time being, been reclassified as Public Non-Financial Corporations, a classification that applies to a broad ranges of bodies including:

- Architects Registration Board
- Arms-Length Management Organisations
- Belfast Harbour Commissioners
- British Nuclear Fuels
- HM Land Registry
- London Underground
- Manchester Airport
- Meteorological Office
6.5 We have not studied the degrees of freedom over strategy and resources or the application of public sector principles of governance, accountability and transparency to Public Non-Financial Corporations. We nevertheless observe more government control and fewer freedoms than private sector bodies in all such organisations.

7. **CONCLUSIONS**

7.1 Based on the evidence set out above, our view is that existing state controls in the Northern Ireland sector are stronger than those currently in force in England. Some of the potential changes to the regulatory framework that are currently out for consultation would serve to strengthen these controls still further. It does appear, therefore, that the Northern Ireland sector is unlikely to escape reclassification without some significant changes.

7.2 As we have noted above, the Government has been quick to introduce measures aimed at re-reclassifying associations in England as private sector. Were associations in Northern Ireland to be reclassified as public sector, their relatively low level of debt (at £708m around 2% of the £33bn owed by English associations) and far fewer number may mean that there will not be the same imperative to get associations back into the private sector as quickly as possible. Indeed, there is precedence for such an outcome in the experience of further education colleges.

7.3 The potential implications of reclassification are difficult to anticipate and much would depend on the objectives of DSD and the specific nature of the new classification. However, a degree of loss of freedom and increased government control and direction would follow from any reclassification scenario.

7.4 Although widely expected, it has not been confirmed that the ONS is planning to undertake a review of the classification of associations in other jurisdictions. The December 2015 forward workplan of the ONS classification team lists the cases that they expect to assess in 2016 and makes no mention of housing associations

---

APPENDIX A: SUMMARY OF RELEVANT LEGISLATION

Note: This is an extract from an appendix to the ‘The Housing Association Guide’ which gives a summary of legislation relevant to housing associations in Northern Ireland.

1. The Department’s main functions in relation to registered housing associations are:
   a) to establish and maintain a register of housing associations (Articles 14-18 of the 1992 Order\(^{21}\));
   b) to promote, assist and facilitate the development and proper performance of registered housing associations (Article 4 of the 1992 Order);
   c) to exercise supervision and control over registered housing associations (Article 4 of the 1992 Order);
   d) to make grants (Article 33 of the 1992 Order) or loans (Article 6 of the 1992 Order) to registered housing associations; and
   e) to publish guidance as to the management of accommodation by registered housing associations (the "Tenants' Guarantee") (Article 11 of the 1992 Order).

2. Associations and their professional advisers should also be aware of the legislation relevant to their primary registration with the Registrar of Credit Unions for Northern Ireland ((a) below) and of those Articles in the 1992 Order that are relevant to the supervision and control of registered housing associations by the Department:
   a) The Industrial and Provident Societies Act (NI) 1969 (the 1969 Act) - sets the statutory framework for associations registered with the Registrar of Credit Unions for Northern Ireland;
   b) Article 17 of the 1992 Order - provides that, once registered, an association may only be removed from the Register under certain narrowly defined circumstances;
   c) Article 13 of the 1992 Order - the need for registered housing associations to obtain the Department's consent before they dispose of land (this includes taking out a loan on security of land). This requirement extends to land owned by unregistered associations which have received public grants;
   d) Article 25 of the 1992 Order - the Department's general power to remove a committee member of a registered housing association and appoint committee member;
   e) Section 9 of the 1969 Act (as amended by Article 29(6) of the 1992 Order) - the need for registered housing associations to obtain the Department's consent to rule amendments;
   f) Article 29 of the 1992 Order - the need for registered housing associations to obtain the Department's consent to amalgamation, transfer of engagements, dissolution or winding up;

---

\(^{21}\) The Housing (Northern Ireland) Order 1992
g) Article 27 of the 1992 Order - the Department’s power to petition for the winding up of a registered housing association;

h) Article 28 of the 1992 Order - on the dissolution or winding up of a registered housing association its net assets must be transferred to the Department or to such registered housing association as the Department directs. Where the association is a charity, the property can only be transferred to another charity with like objects;

i) Article 19 of the 1992 Order - lays down accounting and audit requirements for registered housing associations;

j) Article 20 of the 1992 Order - the legal duty and liabilities upon each person directly concerning with the conduct and management of the affairs of a registered housing association (and in that capacity responsible for the preparation and audit of accounts) in relation to compliance with Article 19 of the 1992 Order;

k) Article 21 of the 1992 Order - the power of the Department to monitor registered housing associations;

l) Article 23 of the 1992 Order - the Department’s power to conduct an inquiry into the affairs of a registered housing association;

m) Article 24 of the 1992 Order - the Department's power to conduct an extraordinary audit of a registered housing association's affairs for the purposes of an Article 23 inquiry;

n) Article 25 of the 1992 Order - the Department's general powers exercisable as a result of an inquiry or an audit under Article 23 or 24; and

o) Article 26 of the 1992 Order - the Department's power to direct transfer of land from one registered housing association to another.

3. In addition all associations with charitable status should be familiar with the principles of general charity law.

4. The attention of associations is also drawn to:

a) Articles 30 and 31 of the 1992 Order. [ICT Note: These relate to payments and benefits managing conflicts of interest]

b) The Housing Association Grant for eligible Housing Activities. General (Northern Ireland) Determination 1992 issued under Articles 33, 35 and 36 of the 1992 Order and describing the principles by which Housing Association Grant is allocated, recovered, etc.; and

c) The Department's published Performance Standards for registered housing associations.